IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 234 of 1998

in

SPECIAL CIVIL APPLICATION No 12558 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVIND GOYENKA

Versus

STATE OF GUJARAT

Appearance:

MR DV PARIKH for Appellant
MR RC KODEKAR, AGP for Respondents No. 1 to 4
MR JITENDRA M PATEL for Respondent No. 5 to 8

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 04/05/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated December 4, 1995 rendered by the learned Single Judge in Special Civil Application No. 12558/94, by which the order passed by the Mamlatdar & A.L.T. Gandhinagar holding the transfer of part of land bearing Survey No.23 of village Nabhoi, Taluka : Gandhinagar, District & Sub-District : Gandhinagarr in favour of the present appellant as being contrary to the provisions of Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 as confirmed by the Prant Officer and Gujarat Revenue Tribunal, is upheld.

2. Land bearing survey no.23 of village Nabhoi, Taluka : Gandhinagar, District : Gandhinagar was owned by the respondents no.5 to 8. The respondents no.5 to 8 had sold land admeasuring 3 Acres & 3 Gunthas out of said survey number to the appellants by a registered sale deed dated May 10, 1984. The Mamlatdar & A.L.T., Gandhinagar was of the view that the above-referred to sale in favour of the appellants was contrary to the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Act" for short). He, therefore, initiated proceedings under section 84-C of the Act. The Mamlatdar & A.L.T. Gandhinagar by his order dated September 6, 1985 concluded that the sale was contrary to the provisions of section 63 of the Act and, therefore, land was liable to be vested without any encumbrances to the Government. However, as required by the provisions of section 84-C(2) of the Act he directed that if the transferred land was restored to its original position within 90 days from the date of initimation of the order, the order directing that the land would vest in the Government would not be implemented. Feeling aggrieved by the said order, the appellants preferred Tenancy Appeal No.17/86 before the Prant Officer, Gandhinagar who dismissed the same by his order dated December 31, 1988. Thereupon the matter was carried before the Gujarat Revenue Tribunal by filing Tenancy Revision Application No. 286/89. The Gujarat Revenue Tribunal also dismissed the revision application filed by the appellants by an order dated September 22, 1992. According to the appellants, some mistakes had crept in in the order of the Tribunal and, therefore, a review application was presented before the Tribunal being Review Application No. 20/93, which was also dismissed by the Tribunal by an order dated October 30,

1993. The appellants had thereafter filed Special Civil Application No. 12558/94 before the High Court challenging the order passed by the Tribunal. The learned Single Judge has dismissed the petition by judgment dated December 4, 1995, which has given rise to present appeal.

3. Mr. D.V.Parikh, learned counsel for the appellants states that even if the Court does not find substance in the appeal, opportunity to restore status-quo ante as contemplated by section 84-C(2) of the Act should be afforded tothe appellants as well as the respondents. Mr. J.M.Patel, learned counsel for the respondents no.5 to 8 also states at the Bar that the Mamlatdar & A.L.T. Gandhinagar while holding that the alienation of the land in question in favour of the appellants was contrary to the provisions of the Act, had permitted the parties to bring the land in question to its original position and, therefore, the request made by the learned counsel for the appellants should be accepted. Mr. R.C.Kodekar,learned A.G.P. has stated that respondents no.1 to 4 have no objection if the appellants are permitted to restore the land to its original position by remanding the matter to the Mamlatdar & A.L.T., Gandhinagar.

4. We have heard the learned Counsel for the parties and taken into consideration the documents forming part of the petition as well as the orders passed by the competent authorities. The facts of the case suggest that before the sale was effected in favour of the appellants, no permission as contemplated by section 63 of the Act was obtained by the original respondents no.5 to 8 or by the appellants. Under the circumstances, the concurrent finding of fact recorded by the competent authorities i.e. Mamlatdar & A.L.T., Gandhinagar, Prant Officer, Gandhinagar and Revenue Tribunal as well as by the learned Single Judge to the effect that the sale was contrary to the provisions of the Tenancy Act being just and proper, is not liable to be set aside in the present appeal. However, initial order dated September 6, 1985 passed by the Mamlatdar & ALT, Panch No.1, Gandhinagar clearly indicates that the parties were given opportunity to bring the disputed land to its original position and if that was done within 90 days from the date of intimation of the order, the direction that the land would vest without any encumbrance to the Government, was not to be implemented. This order of the Mamlatdar & A.L.T. Gandhinagar has been stayed althroughout. Therefore, in the interest of justice we feel that the parties should be permitted to restore status-quo ante

before the Mamlatdar & A.L.T. Gandhinagar and for that purpose the matter deserves to be remanded to the Mamlatdar & A.L.T. Gandhinagar.

For the foregoing reasons, the appeal partly succeeds. The matter is remanded to the Mamlatdar & A.L.T. Panch No.1, Gandhinagar before whom the parties would be entitled to restore status-quo ante in respect of the land in question within 90 days from the date of receipt of the writ. If the parties bring the disputed land to its original position before the Mamlatdar & A.L.T. Gandhinagar within 90 days from the date of receipt of the writ, order dated September 6, 1985 directing that the land shall vest without any encumbrances to the State Government, shall not be implemented. The appeal stands accordingly disposed of, with no order as to costs.

Office is directed to send writ to respondent no.4 immediately. Direct Service is permitted.

(J.M.Panchal,J.)

(A.M.Kapadia,J.)

(patel)